

**TENNESSEE GENERAL ASSEMBLY
FISCAL REVIEW COMMITTEE**



FISCAL NOTE

SB 2860 - HB 3081

February 12, 2012

SUMMARY OF BILL: Creates the Food Tax – Adult Materials Tax Swap Act, which levies a 25 percent sales tax on certain transactions by adult bookstores, sexually explicit businesses, escort-type businesses, on individual charges for viewing sexually explicit movies in hotels or motels, and on adult materials. Levies the occupational privilege tax against adult entertainers employed by adult cabarets. Requires revenue derived from the new sales tax and the occupational privilege tax be deposited into the newly-created Food Tax Reduction Fund (FTRF) for the purpose of offsetting reduced revenue arising from enactment of subsequent legislation that either eliminates or reduces the state sales tax rate levied on food and food ingredients. Requires all monies be held in the fund until such time as the state sales tax rate levied on food and food ingredients is reduced or eliminated.

ESTIMATED FISCAL IMPACT:

Increase State Revenue – \$55,849,400/Recurring/Food Tax Reduction Fund
Decrease State Revenue - \$782,900/Recurring/General Fund

Increase State Expenditures - \$162,000/One-Time/General Fund
\$204,500/Recurring/General Fund

Decrease Local Revenue – \$330,800/Recurring

Other Fiscal Impact – To the extent subsequent legislation is enacted that reduces or eliminates the state sales tax rate levied on food and food ingredients, there will be a recurring increase in state expenditures from the Food Tax Reduction Fund. Such amounts are dependent upon action taken by the General Assembly. As a result, this impact cannot be reasonably quantified at this time.

Assumptions:

- Based on information received from DOR for a bill introduced in 2009 containing similar language to this bill, gross revenue for the adult entertainment industry is estimated to be approximately \$13.2 billion per year.

- Based on data obtained from the U.S. Census Bureau, the population in Tennessee for 2011 was estimated to be 6,346,105; the population for the U.S. is currently estimated to be 312,602,730.
- Tennessee makes up 2.03 percent of the national population (6,346,105 / 312,602,730).
- Tennessee accounts for 2.03 percent (or \$267,960,000) of the adult entertainment industry's total gross revenue (\$13.2 billion x 2.03%).
- Based on information received from DOR in 2009, taxable sales occurring in Tennessee require adjustment to reflect nexus-related barriers to taxing sexually-explicit internet websites and for taxing sexually-explicit phone conversations for pay. This adjustment is estimated as a 12.5 percent reduction to taxable sales.
- Taxable sales following adjustment for nexus-related issues are estimated to be \$234,465,000 per year [$\$267,960,000 \times (100\% - 12.5\%)$].
- Given the 25 percent sales tax proposed for adult materials and entertainment, adjusted taxable sales are estimated to decrease by at least five percent.
- Taxable sales following an adjustment for a decrease in consumption of adult materials and entertainment is estimated to be \$222,741,750 per year ($\$234,465,000 \times 95\%$).
- The recurring increase in state revenue resulting from the additional 25 percent sales tax is estimated to be \$55,685,438 ($\$222,741,750 \times 25\%$). This revenue will be deposited to the FTRF.
- The five percent decrease in consumption of adult materials and entertainment will reduce state sales tax revenue and local option sales tax revenue that would have otherwise been collected.
- The current state sales tax rate is 7.0 percent; the average local option sales tax rate is estimated to be 2.5 percent.
- The recurring decrease in state sales tax revenue due to the decrease in consumption is estimated to be \$820,628 [$(\$234,465,000 - \$222,741,750) \times 7.0\%$].
- Pursuant to Tenn. Code Ann. § 67-6-103(a)(3)(A), local governments receive 4.5925 percent of state sales tax revenue as state-shared sales tax revenue.
- The decrease in local revenue as a result of a reduced state-shared allocation is estimated to be \$37,687 ($\$820,628 \times 4.5925\%$).
- The net decrease in state sales tax revenue to the General Fund due to the decrease in consumption is estimated to be \$782,941 ($\$820,628 - \$37,687$).
- The recurring decrease in local option sales tax revenue due to the decrease in consumption is estimated to be \$293,081 [$(\$234,465,000 - \$222,741,750) \times 2.5\%$].
- The total decrease in local revenue due to the decrease in consumption is estimated to be \$330,768 ($\$293,081 + \$37,687$).
- Pursuant to Section 5 of the bill, an occupational privilege tax of \$400 shall be levied against any person entertaining or performing for remuneration in adult cabarets.
- Davidson County is the only county that currently licenses entertainers working in adult cabarets. Any increase in occupational privilege tax revenue will be derived from Davidson County.
- In 2011, the Davidson County Sexually Oriented Business Licensing Board indicated there were 410 adult entertainers licensed in Davidson County.
- A recurring increase in state occupational privilege tax revenue of \$164,000 ($\400×410). This revenue will be deposited to the FTRF.

- The total recurring increase in state revenue that will be deposited to the FTRF is estimated to be \$55,849,438 (\$55,685,438 + \$164,000).
- Three additional Taxpayer Services Representatives for DOR. The associated recurring increase to state expenditures is estimated to be \$204,504 per year (\$149,400 salaries, \$40,104 benefits, \$15,000 other).
- The one-time increase to state expenditures for computer and software modifications and costs related to the three additional positions is estimated to be \$162,000.

CERTIFICATION:

The information contained herein is true and correct to the best of my knowledge.

A handwritten signature in black ink, appearing to read 'Lucian D. Geise', written in a cursive style.

Lucian D. Geise, Executive Director

/rnc